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Attorneys for Defendant
BAY AREA CABLEVISION, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BERNARD LOVE,

Plaintiff,

vs.

BAY AREA CABLEVISION, INC., a
California Corporation; DOES 1 through 50,
inclusive,

Defendant.

Case No.: C0802012 JW

**JOINT CASE MANAGEMENT
STATEMENT**

Date: September 8, 2008
Time: 10:00 a.m.
Ctmm: 8

1 Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9 and this Court's
2 Standing Order, plaintiff Bernard Love ("Mr. Love") and defendant Bay Area Cablevision, Inc.
3 ("BAC") hereby submit the following Joint Case Management Statement.

4 **1. Jurisdiction and Service**

5 This case was originally filed in the California State Superior Court for the County of
6 Santa Clara. BAC has been served. BAC filed a Notice of Removal, premising jurisdiction of
7 this Court on 28 U.S.C. §1441(b) (federal-question jurisdiction). Mr. Love has filed a Motion for
8 Remand, challenging this Court's removal jurisdiction. Mr. Love's Motion for Remand is set for
9 September 8, 2008.

10 **2. Facts**

11 Mr. Love is the former holder of a license, issued by the FCC, for a multi-channel
12 multipoint distribution service ("MMDS"), call sign WNTM-579, serving the Los Gatos,
13 California area. Mr. Love was issued the license by the FCC in or about 1992.

14 Mr. Love contracted with a California firm, Kingswood Associates, Inc., to assist him in
15 marketing the license. In January 1993, with the assistance of Kingswood Associates, Mr. Love
16 entered into a five-year lease of the license to Gulf American, Inc. The lease agreement was
17 subsequently assigned by Gulf American, Inc. to BAC. The lease in question contained a
18 purchase option allowing the lessee to acquire the license, subject to FCC approval, from Mr.
19 Love for \$60,000.00. In 1996, BAC exercised this option and executed a written Assignment
20 Agreement and paid \$60,000 for the license. BAC then prepared an application for assignment of
21 the license, and submitted the application to the FCC, as required by applicable FCC rule. BAC's
22 assignment application was placed on Public Notice pursuant to FCC regulations. The FCC
23 ultimately granted approval for assignment of the license to BAC. Since 1998, the FCC has
24 recognized BAC as the sole and rightful holder of the license.

25 Mr. Love asserts that the May 1996 Assignment Agreement was entered into without his
26 knowledge or consent, and that his signature was forged on the agreement, and on the transfer
27 application which was submitted by BAC to the FCC. Mr. Love asserts that the Assignment
28 Agreement is void and invalid, as it was entered into without Mr. Love's knowledge, participation

1 or assent. Mr. Love also asserts that the license transfer application was false and fraudulent, and
2 was submitted to the FCC without Mr. Love's knowledge or assent.

3 BAC disputes that the Assignment Agreement was forged, that it "actively concealed"
4 anything from Love, that it engaged in any fraudulent behavior, or that the Assignment
5 Agreement is either void or invalid. BAC asserts that it is the rightful owner of the license.

6 **3. Legal Issues**

7 BAC has filed a Motion to Dismiss on the basis that Mr. Love's claims are barred by the
8 applicable statute of limitations.

9 Mr. Love argues that the doctrine of equitable tolling applies under the facts as alleged in
10 Mr. Love's Complaint. BAC disagrees that the doctrine of equitable tolling, the discovery rule,
11 or any other legal or equitable argument applies.

12 **4. Motions**

13 Mr. Love filed a Motion for Remand pursuant to 28 USC §1447(c), on April 28, 2008.
14 BAC filed a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6), on June 23, 2008. The Court
15 has set both pending motions for hearing on September 8, 2008.

16 Mr. Love does not anticipate filing further motions, other than a motion for summary
17 judgment or partial summary judgment, if warranted by the information obtained through
18 disclosures and discovery. Mr. Love may also file motions in limine, as appropriate, prior to trial.

19 BAC anticipates filing a Motion for Judgment on the Pleadings for Failure to Name a
20 Necessary and Indispensable Party and a Motion for Summary Judgment. BAC reserves the right
21 to bring additional claims against Love and/or others once the parties have conducted reasonable
22 discovery. BAC also anticipates filing motions in limine and discovery-related motions, if
23 necessary.

24 **5. Amendment of Pleadings**

25 At this time, the parties do not anticipate adding parties, or adding or dismissing
26 claims or defenses. The parties propose a deadline for amending the pleadings of January 30,
27 2009.

1 **6. Evidence Preservation**

2 The parties have taken reasonable steps to preserve and/or collect all documents
3 relevant to this action.

4 **7. Disclosures**

5 As noted above, Mr. Love has filed a Motion for Remand, seeking remand of this case to
6 the California State Superior Court, and BAC has filed a Motion to Dismiss, seeking dismissal of
7 the Complaint. In light of the pendency of these motions, the parties propose that initial
8 disclosures under Fed.R.Civ.P. 26(a)(1) be deferred until two weeks after the Court's rulings on
9 the parties' pending motions, in the event that both motions are denied.

10 **8. Discovery**

11 The parties have yet to conduct discovery. The parties anticipate conducting appropriate
12 discovery regarding the relevant course of events, as alleged in the Complaint. Given the relative
13 simplicity of the factual issues involved in this case, the parties do not propose any changes in the
14 limitations set forth in Fed.R.Civ.P. 30(a)(1)(2)(A), or 33(a). The parties propose that the Court
15 direct that all discovery be completed by March 27, 2009.

16 **9. Class Actions**

17 Not applicable.

18 **10. Related Cases**

19 None.

20 **11. Relief**

21 Mr. Love is seeking declaratory relief with respect to the May 1996 Assignment
22 Agreement. Mr. Love is seeking a declaration that the Assignment Agreement is void and
23 invalid, and setting aside the transfer of Mr. Love's right to the FCC broadband license to BAC
24 which is purported to be effected by the Assignment Agreement, and declaring Mr. Love to be the
25 true holder of the license. Mr. Love is also seeking an accounting of the profits realized by BAC
26 through its holding and use of the FCC license, and a disgorgement of these profits to Mr. Love.
27 The amount of profits claimed to have been realized by BAC as a result of its holding and use of
28 the FCC license has not been determined at this time.

1 BAC is not seeking damages at this point. BAC reserves the right to bring claims against
2 Mr. Love and/or others once the parties have conducted reasonable discovery. BAC otherwise
3 denies that Mr. Love is entitled to any damages or other relief in this action.

4 **12. Settlement and ADR**

5 The parties have conferred to select an ADR process, as required by ADR L.R. 3-5. The
6 parties propose that they participate in a court settlement conference, as provided by ADR L.R. 7.
7 The parties have not engaged in settlement discussions to date. Settlement negotiations may be
8 productive, upon the Court's ruling on BAC's pending Motion to Dismiss, and Mr. Love's
9 pending Motion for Remand.

10 **13. Consent to Magistrate Judge for all Purposes**

11 BAC filed a Declination to Proceed Before Magistrate Judge, and this case was
12 reassigned to a United States District Court Judge.

13 **14. Other References**

14 The parties do not believe that this case is suitable for reference to binding arbitration, a
15 special master, or the Judicial Panel on Multidistrict Litigation.

16 **15. Narrowing of Issues**

17 It does not currently appear that the issues in this case may be narrowed by agreement, or
18 by motion. The presentation of evidence at trial may be expedited by the use of summaries of
19 evidence, as appropriate. The parties are not able to enter into any factual stipulations at this
20 time, due to the lack of disclosure or discovery. Neither party intends to request a bifurcation of
21 issues, claims or defenses.

22 **16. Expedited Schedule**

23 The parties do not believe that this case may be appropriately handled on an expedited
24 basis.

25 **17. Scheduling**

26 The parties suggest that the Court set the following dates and deadlines in the case:

27 **Completion of Fact Discovery: March 27, 2009**

28 **Disclosure of Experts and Reports: April 10, 2009**

Deadline for Service of Rebuttal Expert Reports: April 24, 2009
Completion of Expert Discovery: May 8, 2009
Deadline to Hear Dispositive Motions: June 1, 2009
Pretrial Conference: June 19, 2009
Trial: June 29, 2009

18. Trial

This case will be tried to the Court. The trial is expected to take three days.

19. Disclosure of Non-Party Interested Entities or Persons

Each party has filed a Certification of Interested Entities or Persons, as provided by Civil Local Rule 3-16. Defendant BAC is a wholly-owned subsidiary of Sprint Nextel Corporation, a Delaware corporation. The parties are not aware of any other entities or persons who either have a financial interest in the case or in a party, or any other kind of interest that could be substantially affected by the outcome of this case.

20. Other Matters

None at this time.

Dated: August 28, 2008

**LAW OFFICES OF ANTHONY E. BELL, INC.
LICHTENFELS, PANSING & MILLER, P.C.**

By: 

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BERNARD LOVE

Dated: August 28, 2008

BRYAN CAVE LLP

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